No. 03-271

Supreme Court U.S.
FILED
OCT 2 _ 2003
OFFICE OF THE CLERK

In The
Supreme Court of the United States

CAVALIER TELEPHONE, LLC,
Petitioner,

v.

VERIZON VIRGINIA INC.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

Stephen T. Perkins
Counsel of Record
CAVALIER TELEPHONE, LLC
2134 West Laburnum Avenue
Richmond, Virginia 23227
(804) 422-4517

Counsel for Petitioner

THE LEX GROUP ♦ 1108 East Main Street ♦ Suite 1400 ♦ Richmond, Virginia 23219
(804) 644-4419 ♦ (800) 856-4419 ♦ Fax (804) 644-3660 ♦www.thelexgroup.com

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

ARGUMENT 1

CONCLUSION.....3

TABLE OF AUTHORITIES

Page

Cases:

Morton v. *Mancari*,
417 U.S. 535 (1974) 2

S.S.W., Inc. v. *Air Tans. Ass'n of Am.*,
191 F.2d 658, 664 (D.C. Cir. 1951),
cert. denied, 343 U.S. 955 (1952).....2

Sunoco Energy Dev. Co. v. Burlington N. Inc.,
483 F. Supp. 119 (D. Wyo. 1980) 2

Statute:

47 U.S.C. §§ 151 *et seq* 1

ARGUMENT

Cavalier Telephone, LLC ("Cavalier") respectfully submits this reply brief in support of its petition for writ of certiorari. Both Cavalier and respondent, Verizon Virginia Inc. ("Verizon"), agree that this Court should hold Cavalier's petition pending a decision in *Law Offices of Curtis V. Trinko, LLP v. Bell Atlantic Corp.*, Case No. 02-682, and grant Cavalier's petition if *Trinko* is not resolved on the merits. See Pet. at 3; Resp. Opp. at 1.

The principal thrust of Verizon's argument is that Cavalier "seeks to sidestep or override the regulatory regime"[1] established by the Telecommunications Act of 1996, codified at 47 U.S.C. §§ 151 *et seq.* See Resp. Opp. at 4. Verizon erroneously posits the issue as one of whether the antitrust laws extend to conduct subject to federal regulation, when the real question is whether regulation displaces the antitrust laws. The courts have long rejected Verizon's position.

For example, examining anticompetitive conduct that also allegedly violated the Civil Aeronautics Act, the D.C. Circuit concluded that: "the same set of facts may give rise to both a violation of [the Act and] the antitrust laws. Although the second does not necessarily follow from the first, but is bottomed on its own statutory standards, the antitrust remedy of treble

---

1. Verizon undercuts its own argument with its incessant assault upon the very regulatory regime to which it would have this Court defer. *See AT&T Corp.* v. *Iowa Utilities Bd.*, 525 U.S. 366 (1999); *USTA* v. *FCC*, 290 F.3d 415 (2002); *Petition for Writ of Mandamus, USTA* v. *FCC*, Nos. 00-1012, 00-1015, *et al.* (D.C. Cir. Aug. 28, 2003).

damages is not defeated by the fact that the Civil Aeronautics Act is also violated." *S.S.W., Inc.* v. *Air Tans. Ass'n of Am.*, 191 F.2d 658, 664 (D.C. Cir. 1951), *cert. denied*, 343 U.S. 955 (1952).[2]

Other courts have reiterated that "in view of the importance of the antitrust laws to the unregulated part of the economy, the rule has been developed that the mere existence of a regulatory statute does not result in complete withdrawal of the regulated industry from the operation of the antitrust laws." *Sunoco Energy Dev. Co.* v. *Burlington N. Inc.*, 483 F. Supp. 119, 123 (D. Wyo. 1980) (quoting *S.S.W.*, 191 F.2d at 661).

The fundamental question raised by Cavalier's complaint against Verizon is not whether similar issues violate other laws, as Verizon wrongly argues (Resp. Opp. at 3-7), or whether Cavalier was denied other relief in rulings not before this Court for review (*id.* at 1-2). Rather, the issue is whether Cavalier alleged a valid cause of action against Verizon for violation of the antitrust laws. As both Cavalier and Verizon agree, if this Court does not decide that issue in *Trinko*, then it should decide the issue in this case.

---

[2] *See also Morton* v. *Mancari*, 417 U.S. 535, 551 (1974) ("when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective").

CONCLUSION

The Court should hold the petition and, if the decision in *Trinko* does not resolve the question presented, grant certiorari.

Respectfully submitted,

STEPHEN T. PERKINS
Counsel of Record
CAVALIER TELEPHONE, L.L.C.
2134 West Laburnum Ave.
Richmond, VA 23227
(804) 422-4517

Counsel for Petitioner

October 2, 2003